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EXAMINER	
EDELMAN, BRADLEY E	

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/724,336	CHOW ET AL.	
	Examiner	Art Unit	
	Bradley Edelman	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 November 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This Office action is in response to Applicant's amendments and request for reconsideration filed on August 23, 2004. Claims 1-31 are presented for further examination. This office action is final.

Specification

The disclosure is objected to because of the following informalities: On p. 12, line 11, the phrase "the tracked efficiency rating *incorporate* status information..." (emphasis added) appears to contain incorrect grammar. Applicant submitted an amendment in response to Examiner's first office action to correct the mistake, but the amendment did not change the mistake.

Appropriate correction is required.

Claim Objections

Claims 23 and 28 objected to because of the following informalities: The claims both contain the phrase "based at least *on* part on second contacting" (emphasis added). See lines 4-5 of claim 23 and lines 5-6 of claim 28. It appears that the term "on part" should read "in part." Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

All of the independent claims (i.e. claims 1, 12, 22, and 27) now include the new limitation of "determining the second efficiency rating [based] in part on a *predicted reliability rating* associated with the second server" (emphasis added). There is no evidence in the specification that Applicant possessed this claimed feature at the time the application was filed. Notably, the original specification mentions nothing about *predicting* a reliability rating. It only describes *storing* a reliability rating (see p. 11, lines 1-5, for example). Thus, it does not appear that Applicant possessed the claimed feature of determining an efficiency based on part on a predicted reliability rating.

2. Claims 12-21, 23, 28, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In considering claim 12, the term "said servers" on line 5 of the claim lacks sufficient antecedent basis and is thus unclear. Claims 13-21 depend from claim 12 and are thus rejected as well.

In considering claim 23, the claim contains what appears to be a grammatical mistake, and is thus ambiguous. For example, lines 2-3 state, "determining said first efficiency rating based in part on first contacting, by the client, of the first server." Lines 4-5 contain the same structure. It is not clear from the structure of the phrase what "of the first server" modifies. It could potentially modify the "efficiency rating" or "the first contacting" or even "the client." To resolve such ambiguity, Examiner suggests amending the phrase to read "determining said first efficiency rating of the first server, based at least in part on first contacting the client." This is not the sole way to interpret the phrase, however, so Applicant should amend the claim to reflect Applicant's intended interpretation.

Claim 28 contains the same ambiguities as claim 23.

In considering claim 29, the phrase "predicted communication" on line 9 of the claim lacks sufficient antecedent basis. It appears the phrase should read "predicted communication efficiency."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-5, 8, 10, 12-15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (U.S. Patent No. 6,223,209), in view of Farber et al. (U.S. Patent No. 6,415,280, hereinafter "Farber"), and further in view of Cherkasova et al. (U.S. Patent No. 6,360,270, hereinafter "Cherkasova").

In considering claim 1, Watson discloses a method for locating an efficient server among servers mirroring a network site (col. 2, lines 52-59, "mirror server sites"), comprising:

Receiving by a first server ("server 1," also called the "primary server") an incoming connection from a client ("client 2" or "client 3") in communication with said servers over a network (col. 2, lines 45-47; col. 3, 41-44);

Providing a first efficiency rating ("least number of router hops or the highest bandwidth path," col. 3, lines 66-67) for communication between the first server and the client, and providing a second efficiency rating for communication between a second server and the client (col. 3, lines 64-67, "primary server determines which satellite server is closest to the client"; col. 4, lines 4-8, wherein one method of determining the closest server includes "maintain[ing] a table of catalogue or client addresses together with an identification of the primary or satellite server closest to each client entry in the table". Thus, the primary server measures its own efficiency and the second server efficiency to determine which server to subsequently connect to); and

Directing the client to subsequently communicate with the second server when the second efficiency rating is better than the fist efficiency rating (col. 4, lines 1-3,

wherein a home page is returned to the client with links to the second server, which links thereby direct the client to subsequently communicate with the second server).

However, Watson does not disclose that the second efficiency rating could be based in part on a predicted reliability rating associated with the second server. Nonetheless, the feature of selecting servers based in part on a reliability rating and the feature of predicting reliability ratings for server-connection systems are both well known in the art, as evidenced by Farber and Cherkasova respectively.

First, Watson does not discuss using reliability to select the servers. Instead, Watson focuses on using some measure of distance or bandwidth to select the server. Nonetheless, Watson does so for the purpose of increasing reliability of the system (col. 4, lines 48-49, describing that the system improves "response time, performance, and reliability"). Furthermore it is well known as evidenced by Farber that in mirrored server systems for client requests, the server selected could be chosen based on a combination of bandwidth, cost, and reliability (col. 40, claims 10, 15, 16, "resolving the request for the particular data file based on a measure of availability of at least one of the servers... wherein the measure of availability is based on one or more of: [bandwidth to the server, cost of a connection to the server, and reliability of a connection to the server]"). Thus, given this knowledge, a person having ordinary skill in the art would have readily recognized the desirability and advantages of selecting the servers taught by Watson according to cost and/or reliability in addition to bandwidth, as a way of further increasing reliability and performance of the system (as suggested by

Watson, col. 4, lines 48-49). Therefore, it would have been obvious to include the reliability of the servers as part of the efficiency rating in the system taught by Watson.

Furthermore, although neither Watson nor Farber teach *predicting* a reliability rating, using predicted reliability ratings to determine whether a server should be accessed is well known, as evidenced by Cherkasova. In a similar art, Cherkasova discloses an admission control system for a server, which allows users to access a server based on an admission control factor derived in part from the reliability of the server (i.e. "aborted client requests"; col. 4, lines 1-15; col. 3, lines 27-43). Thus, Cherkasova predicts the future reliability of the server based on past reliability (see also, col. 7, lines 20-22; col. 9, lines 21-28). Given this knowledge, a person having ordinary skill in the art would have readily recognized the desirability and advantages of not only using a measured reliability to select which server should admit the client's request in the combined system of Watson and Farber, but also using a predicted reliability rating as taught by Cherkasova, because using such a rating will most likely give more accurate results regarding expected reliability. Therefore, it would have been obvious to use predicted reliability ratings as taught by Cherkasova in the combined system of Watson and Farber.

In considering claim 2, Watson further discloses that providing the efficiency rating comprises either measuring the efficiency between the first server and the client (col. 4, lines 12-24, using a technique similar to a "traceroute" approach upon receipt of a client request), or looking up a previously measured communication efficiency

between the first server and the client (col. 4, lines 4-11, "maintain a table or catalogue of client addresses together with an identification of the primary or satellite server closest to each client entry in the table").

In considering claim 3, Watson further discloses that directing comprises returning a network resource ("home page") to the client containing at least one reference therein to the second server ("primary or home server, www.xyz.com, then returns a home page with subsequent links pointing to appropriately selected satellite server, e.g. www.xyz2.com," col. 4, lines 1-3).

In considering claim 4, Watson further discloses that the reference comprises a web page element ("link") linking to the second server such that activation thereof by the client causes the client to contact the second server (col. 4, lines 1-3, "primary or home server, www.xyz.com, then returns a home page with subsequent links pointing to appropriately selected satellite server, e.g. www.xyz2.com," col. 4, lines 2-3).

In considering claim 5, Watson further discloses that the network resource received from the first server comprises a tag based structure having embedded identifiers specifying resources located on the network (i.e. a home page with links, col. 4, lines 1-3), wherein at least one reference is an embedded identifier specifying a network resource of the second server (i.e. "links pointing to appropriately selected satellite server, e.g., www.xyz2.com").

In considering claim 8, Watson further discloses storing efficiency ratings for communication with the client on a storage device (col. 4, lines 5-11, wherein the "table" is necessarily stored on a storage device); and retrieving at least one of the stored efficiency ratings from said second server over a communication channel different from the network (col. 4, lines 12-24, describing contacting the second server via "traceroute" to determine the most efficient server; col. 25-37, wherein the different servers reside at different "disjoint" networks).

In considering claim 10, Watson further discloses that the connection from the client is generated by a browser ("browser," col. 3, line 58), and wherein the efficiency rating measures efficiency of delivering web page resources to the client (i.e. which page server, www.xyz.com, www.xyz2.com, etc. has the highest bandwidth path, col. 3, lines 62-67).

Regarding claim 12, Examiner has interpreted the term "said servers" on line 5 as if it had contained sufficient antecedent basis. Claim 12, as thus understood, presents an article comprising a storage medium with instructions for execution, which article performs the same method steps described in claims 1 and 2 combined. Therefore, claim 12 is rejected for the same reasons given regarding claims 1 and 2.

In considering claim 13, claim 13 presents instructions for performing the same steps as claim 3, and is thus rejected for the same reason as claim 3 (see col. 4, lines 1-3).

In considering claims 14, 15, and 20, claims 14, 15, and 20 present an article for performing the same steps as claims 4, 5, and 10 respectively and are thus rejected for the same reasons.

4. Claims 7, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson, Farber, and Cherkasova, in view of O'Neil et al. (U.S. Patent No. 6,128,279, hereinafter "O'Neil").

In considering claims 7 and 17, although the system taught by Watson, Farber, and Cherkasova discloses substantial features of the invention, it fails to disclose that each of the servers stores efficiency ratings on a commonly accessible storage device. Instead, Watson discloses that the same server receives the initial request and then decides which other server (or itself) should handle the request. However, such a system as taught by Watson – i.e. one where a single server is responsible for all initial requests – is sub-optimal, as it creates a substantial potential for bottleneck and single node network failure (see O'Neil, col. 2, lines 12-21). To solve such a problem, O'Neil employs a peer-to-peer based load balancing scheme, where any of the mirrored servers can accept the initial request and can then decide which of the group of servers is best configured to service the request (col. 3, lines 18-24). In implementing such a

system, the O'Neil system shares server capability information (such as load, etc.) among all of the servers, and uses that information to make routing determinations for the requests (col. 3, lines 34-52).

Given this teaching, a person having ordinary skill in the art would have readily recognized the desirability and advantages of altering the Watson system to allow for a peer-to-peer based mirrored server system as taught by O'Neil, where each server maintains a copy of the server load/proximity table taught by Watson, in order to prevent single node network failures and bottlenecks. Therefore, it would have been obvious for each of the servers in the system taught by the combined system of Watson, Farber, and Cherkasova to store efficiency ratings on a commonly accessible storage device, as taught by O'Neil.

In considering claim 18, Watson further discloses storing efficiency ratings for communication with the client on a storage device (col. 4, lines 5-11, wherein the "table" is necessarily stored on a storage device); and retrieving at least one of the stored efficiency ratings from said second server over a communication channel different from the network (col. 4, lines 12-24, describing contacting the second server via "traceroute" to determine the most efficient server; col. 25-37, wherein the different servers reside at different "disjoint" networks).

However, Watson does not disclose storing by the first and the second server the efficiency ratings for communication with the clients. Nonetheless, for the same reasons given with regard to claims 7and 17 (i.e. to reduce bottleneck and eliminate

single node network failures by employing a peer-to-peer based mirrored server system as taught by O'Neil), it would have been obvious to store the table information taught by Watson on all servers in the group.

5. Claims 11, 21-23, 26-28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson, Farber, and Cherkasova, in view of Logan et al. (U.S. Patent No. 6,578,066, hereinafter "Logan").

In considering claim 22, Watson discloses a method comprising:

Determining a first server on a network (col. 3, lines 51-60, wherein a DNS server will inherently resolve the URL "www.xyz.com" to determine the IP address of the home server, as described above with regard to claim 11);

Determining a first efficiency rating ("least number or router hops or the highest bandwidth path," col. 3, lines 66-67) for communication between the client and the first server, and determining a second efficiency rating for communication between the client and a second server (col. 3, lines 64-67, "primary server determines which satellite server is closest to the client"; col. 4, lines 4-8, wherein one method of determining the closest server includes "maintain[ing] a table of catalogue or client addresses together with an identification of the primary or satellite server closest to each client entry in the table" (emphasis added); and

Evaluating whether the second efficiency rating exceeds the first efficiency rating, and if so, then providing a web page of the first server which contains content link to the second server (col. 3, line 65 – col. 4, line 3, "primary or home server, www.xyz.com,

then returns a home page with subsequent links pointing to appropriately selected satellite server, e.g. www.xyz2.com.").

However, Watson does not disclose (1) the second efficiency rating is based in part on a predicted reliability rating associated with the second server, and (2) determining the first server being geographically closer to a client than the second server. Nonetheless, for the reasons stated previously with regard to claim 1, feature (1) would have been obvious to add to Watson, in view of Farber and Cherkasova. In addition, feature (2) – i.e. determining a first server being geographically closer to a client than the second server – is well known in the mirrored server art, as evidenced by Logan.

In a similar art, Logan discloses a mirrored server system wherein a head server, or "switch server" selects which mirrored server in a site should respond to a client's request based on a combination of the health of the server, geographical location, response times, and throughputs (col. 5, lines 11-17; col. 10, lines 6-13, "it is therefore important for a switch to weigh-in to the final decision the geographic source of a user request"). In examining geographic location, Logan thus determines which server is geographically closest to the client. Given this teaching, a person having ordinary skill in the art would have readily recognized the desirability and advantages of adding this geographic determination taught by Logan as an additional criteria for deciding on which server to select in the combined system of Watson, Farber, and Cherkasova, to further increase efficiency and decrease delays to requests on the system (see Logan, col. 9, line 54 – col. 10, line 5, describing that "having a user in Japan come all the way to the

Atlanta site for content would waste bandwidth... [and] would directly result in unnecessary response delays to the Japanese user"). Therefore, it would have been obvious to add the geographic determination taught by Logan into the server selection system taught by Watson, Farber, and Cherkasova.

In considering claim 23, claim 23 has been interpreted as follows:
The method of claim 22, further comprising:

Determining said first efficiency rating of the first server, based at least in part on first contacting the client; and

Determining the second efficiency rating of the second server, based at least on part on second contacting the first server.

As understood, claim 23 is further disclosed by Watson. Watson discloses determining the first efficiency rating of the first server (col. 3, 65-67; col. 4, lines 6-9, wherein the system determines the number of hops between the client and the first server, which would necessarily be determined by contacting the client). Watson further discloses determining the second efficiency rating of the second server (col. 3, line 65-67, wherein both server efficiency ratings are compared), wherein the system determines the number of hops between the client and the second server by contacting the first server and viewing a client table at the first server (col. 4, lines 1-11).

In considering claim 26, Watson further discloses that if the second efficiency rating exceeds the first efficiency rating, then receiving a web page ("home page") from

the first server with all web links directed towards the second server, and if the first efficiency rating exceeds the second efficiency rating, then receiving the web page from the first server with all web links directed towards the first server (col. 4, lines 1-9, "returns a home page with subsequent links point to appropriately selected satellite server," wherein the satellite server selected is the "primary or satellite server closest to each client entry in the table.").

In considering claim 27, claim 27 further presents an article having a processor and a storage medium having instructions for performing the same steps as claim 22. Therefore, claim 27 is rejected for the same reasons as claim 22.

In considering claim 28, claim 28 presents the same ambiguities as claim 23, and further presents instructions for performing the same steps as claim 23. Therefore, claim 28 is rejected for the same reasons as claim 23.

In considering claim 31, claim 31 presents instructions for performing the same steps as claim 26, and is thus rejected for the same reasons as claim 26.

In considering claim 11, the combined system of Watson, Farber, Cherkasova, and Logan further discloses contacting the first server in accordance with its being geographically closest to the client (i.e. in some cases, the server selection will result in the closest geographical server to be selected), and contacting the second server in

accordance with the second server having the higher efficiency rating notwithstanding the first server being geographically closest to the client (i.e. in others, even if the first server is closer geographically, it will still contact the second server if it is overloaded – see Logan, col. 9, lines 60-62, "generally it is preferably best if users within a region are associated with servers in or near that region, unless the nearby server is down or overloaded"). Logan further discloses contacting a resolution service to determine which server has a closest geographical proximity to the client (Logan, col. 10, lines 13-51).

In considering claim 21, claim 21 presents substantially the same limitation as claim 11. Note that claim 21 further elaborates that a "network site identifier" is provided to the resolution service. This feature is further taught by Logan (col. 10, lines 37-51, "domain name").

6. Claims 6, 9, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson, Farber, and Cherkasova in view of Emens et al. (U.S. Patent No. 6,606,643, hereinafter "Emens").

In considering claim 6, Watson discloses a method of dynamically selecting a closest server to the client (col. 4, lines 12-24). However, Watson does not disclose that the dynamic method includes returning a network resource to the client such that the resource causes the client to contact the second server so that the second server can measure a second efficiency rating for client communication, and retrieving the

second efficiency rating. Nonetheless, this sort of dynamic response-time detection method for determining communication efficiency is well known, as evidenced by Emens.

In a similar art, Emens discloses a system for selecting from among a group of mirrored servers to communicate with a requesting client (col. 7, lines 57-62), wherein a first server returns a network resource to the client (col. 8, lines 20-23, "the host server 12 returns the requested web content, but also returns a list of mirror server addresses with the web content"), configures the network resource to cause the client to contact the second server so that the second server can measure a second efficiency rating for communication with the client (col. 8, lines 25-40, wherein each applet from the client "makes an identical HTTP mirror server request to its corresponding mirror server... [and] measures the round trip latency"), and retrieves the second efficiency rating (col. 8, lines 38-40, "round trip times are compared between applets and a 'winner applet' having the lowest time is identified.").

Thus, the claimed method of determining an efficiency rating of a second mirrored server in a mirrored server system is well known. A person having ordinary skill in the art would have readily recognized the desirability and advantages of using the well-known method taught by Emens in the system taught by Watson, Farber, and Cherkasova, so that the system could select a current, most efficient mirrored server, rather than relying on a potentially dated efficiency table. Thus, it would have been obvious to include the efficiency rating mechanism taught by Emens in the system taught by Watson, Farber, and Cherkasova.

In considering claim 9, the combined system of Watson and Emens as discussed with regard to claim 6, discloses providing the efficiency rating by determining an end-user delay (i.e. "round trip latency") between the client's request for network resources to a server, and a client's receipt of the resource from the server (Emens, col. 8, lines 20-40, wherein the client makes HTTP requests to each of the mirrored servers, receives responses, and then measures the latency between each communication). It would have been obvious to a person having ordinary skill in the art to include this feature in the system taught by Watson, Farber, and Cherkasova, so that the system could select a current, most efficient mirrored server, rather than relying on a potentially dated efficiency table.

In considering claim 16, claim 16 presents an article for performing the same method taught in claim 6. Therefore, claim 16 is rejected for the same reasons as claim 6.

In considering claim 19, claim 19 recites an apparatus for performing the method of claim 9, and is thus rejected for the same reasons as claim 9.

Note: The inventions claimed in claims 24, 25, 29, and 30, including all of the limitations of the claims from which they depend, were not found in the prior art. However, these claims depend from claims 23 and 28 respectively, each of which is

ambiguous. Therefore, claims 24, 25, 29, and 30 cannot be considered to contain allowable subject matter at this point because the subject matter of the claims is unclear.

Response to Arguments

In response to Applicant's request for reconsideration filed on August 23, 2004, the following factual arguments are noted:

a. Watson does not disclose determining the second efficiency rating based in part on a predicted reliability rating of the connection between the client and the second server, as claimed in the amended independent claims.

b. Logan does not disclose determining the second efficiency rating based in part on a predicted reliability rating of the connection between the client and the second server, as claimed in the amended independent claims.

Examiner agrees with both of these assertions, and has issued new grounds for rejection based on the amended claims. Note however, that the amended claim limitation of basing an efficiency rating on a *predicted* reliability rating constitutes new matter, and has thus been rejected under 35 USC 112, 1st paragraph in addition to being rejected in view of newly cited art.

Note: Applicant also argues that claims 23 and 28 do not appear to be ambiguous. Examiner still believes that the phrases used in these claims is unclear. As

discussed in the claim rejection above, an example of one phrase in those claims states "determining said first efficiency rating based in part on first contacting, by the client, of the first server." It is not clear what the phrase "of the first server" modifies. Note that technically, the phrase is incomplete because it ends with a verb "contacting" that has no subject. Instead, the verb is modified by the phrase "by the client" and is then followed by the phrase "of the first server" which apparently modifies something previously mentioned but is nonetheless unclear. It appears the word "of" may be misplaced. If the word were deleted, then the phrase would be clear.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

For all correspondences: (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Bradley Edelman

BE
December 20, 2004